

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

JAIME M. MUÑOZ,

No. CIV.S-04-1475 DAD

Plaintiff,

v.

ORDER

JO ANNE B. BARNHART,  
Commissioner of Social  
Security,

Defendant.

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This social security action was submitted to the court, without oral argument, for ruling on plaintiff's motion for summary judgment and/or remand and defendant's cross-motion for summary judgment. For the reasons explained below, the decision of the Commissioner of Social Security ("Commissioner") is affirmed.

#### **PROCEDURAL BACKGROUND**

Plaintiff Jaime Macaraig Muñoz applied for Supplemental Security Income under Title XVI of the Social Security Act (the "Act"). (Transcript ("Tr.") at 39-48.) The Commissioner denied

1 plaintiff's application initially and on reconsideration. (Tr. at  
2 25-28, 31-34.) Pursuant to plaintiff's request, a hearing was held  
3 before an administrative law judge ("ALJ") on January 13, 2004, at  
4 which time plaintiff was represented by a non-attorney  
5 representative. (Tr. at 285-311.) In a decision issued on February  
6 27, 2004, the ALJ determined that plaintiff was not disabled. (Tr.  
7 at 11-18.) The ALJ entered the following findings:

- 8       1. Claimant has not engaged in substantial  
9            gainful activity since the alleged  
onset of disability.
- 10      2. Claimant's radiating back pain post  
11            lumbar fusion is a "severe" impairment  
based upon the requirements in the  
Regulations (20 CFR § 416.920).
- 12      3. This medically determinable impairment  
13            does not meet or medically equal any of  
the listed impairments in Appendix 1,  
Subpart P, Regulation Number 4.
- 14      4. Claimant's allegations regarding his  
15            limitations are not totally credible  
for the reasons set forth in the body  
of the decision.
- 16      5. Claimant retains the residual  
17            functional capacity to perform a range  
18            of light work. Specifically, Claimant  
is able to occasionally lift and carry  
20 pounds. He is precluded from  
prolonged sitting and standing, but he  
can tolerate sitting and standing for  
thirty-minute intervals. Claimant is  
limited to occasional bending and  
stooping and no repetitive pushing and  
pulling.
- 19      6. Claimant's past relevant work as a  
20            cashier did not require the performance  
of work-related activities precluded by  
his residual functional capacity (20  
CFR § 416.965).

7. Claimant's medically determinable radiating back pain post lumbar fusion does not prevent Claimant from performing his past relevant work as a cashier.

8. Claimant was not under a "disability" as defined in the Social Security Act at any time through the date of the decision (20 CFR § 416.920(e)).

7 (Tr. at 17-18.) The Appeals Council declined review of the ALJ's  
8 decision on June 10, 2004. (Tr. at 5-8.) Plaintiff then sought  
9 judicial review, pursuant to 42 U.S.C. § 405(g), by filing the  
10 complaint in this action on July 22, 2004.

## **LEGAL STANDARD**

The Commissioner's decision that a claimant is not disabled will be upheld if the findings of fact are supported by substantial evidence and the proper legal standards were applied. Schneider v. Comm'r of the Soc. Sec. Admin., 223 F.3d 968, 973 (9th Cir. 2000); Morgan v. Comm'r of the Soc. Sec. Admin., 169 F.3d 595, 599 (9th Cir. 1999). The findings of the Commissioner as to any fact, if supported by substantial evidence, are conclusive. See Miller v. Heckler, 770 F.2d 845, 847 (9th Cir. 1985). Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. Morgan, 169 F.3d at 599; Jones v. Heckler, 760 F.2d 993, 995 (9th Cir. 1985) (citing Richardson v. Perales, 402 U.S. 389, 401 (1971)).

24 A reviewing court must consider the record as a whole,  
25 weighing both the evidence that supports and the evidence that  
26 detracts from the ALJ's conclusion. See Jones, 760 F.2d at 995. The

court may not affirm the ALJ's decision simply by isolating a specific quantum of supporting evidence. Id.; see also Hammock v. Bowen, 879 F.2d 498, 501 (9th Cir. 1989). If substantial evidence supports the administrative findings, or if there is conflicting evidence supporting a finding of either disability or nondisability, the finding of the ALJ is conclusive, see Sprague v. Bowen, 812 F.2d 1226, 1229-30 (9th Cir. 1987), and may be set aside only if an improper legal standard was applied in weighing the evidence, see Burkhardt v. Bowen, 856 F.2d 1335, 1338 (9th Cir. 1988).

In determining whether or not a claimant is disabled, the ALJ should apply the five-step sequential evaluation process established under Title 20 of the Code of Federal Regulations, Sections 404.1520 and 416.920. See Bowen v. Yuckert, 482 U.S. 137, 140-42 (1987). This five-step process can be summarized as follows:

Step one: Is the claimant engaging in substantial gainful activity? If so, the claimant is found not disabled. If not, proceed to step two.

Step two: Does the claimant have a "severe" impairment? If so, proceed to step three. If not, then a finding of not disabled is appropriate.

Step three: Does the claimant's impairment or combination of impairments meet or equal an impairment listed in 20 C.F.R., Pt. 404, Subpt. P, App. 1? If so, the claimant is conclusively presumed disabled. If not, proceed to step four.

Step four: Is the claimant capable of performing his past work? If so, the claimant is not disabled. If not, proceed to step five.

Step five: Does the claimant have the residual functional capacity to perform any other work? If so, the claimant is not disabled. If not, the claimant is disabled.

1     Lester v. Chater, 81 F.3d 821, 828 n.5 (9th Cir. 1995). The claimant  
2     bears the burden of proof in the first four steps of the sequential  
3     evaluation process. Yuckert, 482 U.S. at 146 n.5. The Commissioner  
4     bears the burden if the sequential evaluation process proceeds to  
5     step five. Id.; Tackett v. Apfel, 180 F.3d 1094, 1098 (9th Cir.  
6     1999).

## **APPLICATION**

8 Plaintiff advances two main arguments in his motion for  
9 summary judgment. First, plaintiff generally asserts that the ALJ's  
10 residual functional capacity assessment is not supported by  
11 substantial evidence. Second, plaintiff argues that the ALJ erred in  
12 discounting the testimony of plaintiff regarding the severity of his  
13 symptoms and the resulting limitations those symptoms place upon him.  
14 The court addresses these main arguments, as well as plaintiff's  
15 other contentions, below.

16 Beginning with plaintiff's first main argument, a  
17 claimant's residual functional capacity is what he can still do  
18 despite his limitations and is an assessment based upon all of the  
19 relevant evidence. 20 C.F.R. §§ 404.1545(a), 416.945(a); see also  
20 Mayes v. Massanari, 276 F.3d 453, 461 (9th Cir. 2001). It is the  
21 duty of the ALJ to determine a claimant's residual functional  
22 capacity from the medical record. 20 C.F.R. §§ 404.1546(c),  
23 416.946(c); see also Vertigan v. Halter, 260 F.3d 1044, 1049 (9th  
24 Cir. 2001).

25 Here, the assessment of the consultative examiner upon whom  
26 the ALJ relied, along with the assessments of the physician who

1 examined plaintiff for workers' compensation purposes and the non-  
2 examining state agency physician, constitute substantial evidence in  
3 support of the ALJ's residual functional capacity determination. The  
4 ALJ considered all of the evidence and found plaintiff to have the  
5 residual functional capacity to perform light work that allows him to  
6 occasionally lift up to twenty pounds; sit and stand for thirty-  
7 minute intervals; engage in occasional bending and stooping; and  
8 avoid repetitive pushing and pulling. (Tr. at 17, 18.) The February  
9 23, 2003, opinion of James L. Martin, M.D., a consulting internal  
10 medicine specialist (Tr. at 167-69); the March 23, 2003, opinion of  
11 nonexamining state agency physician, C. Eskander, M.D., (Tr. at 172-  
12 79); and the October 18, 2003, Agreed Medical Evaluation by  
13 orthopedist Richard G. Baker, M.D. (Tr. at 250-57) are consistent  
14 with the assessment that plaintiff is able to perform the range of  
15 light work identified by the ALJ. Accordingly, the ALJ's residual  
16 functional capacity assessment is supported by substantial evidence.

17 The court is not persuaded by plaintiff's more specific  
18 contention that the ALJ failed to discuss certain medical records and  
19 the clinical findings reflected therein. An ALJ is not required to  
20 expressly mention each and every medical document within the  
21 administrative record. See Vincent v. Heckler, 739 F.2d 1393, 1394-  
22 95 (9th Cir. 1984) ("The Secretary, however, need not discuss all  
23 evidence presented to her. Rather, she must explain why "significant  
24 probative evidence has been rejected.").

25 Further, while plaintiff discusses certain medical records  
26 and findings in his motion in considerable detail, it must be noted

1 that the court's scope of review of decisions granting or denying  
2 Social Security disability is more limited than suggested by  
3 plaintiff in his argument. Hall v. Sec'y of Health, Educ. & Welfare,  
4 602 F.2d 1372, 1374 (9th Cir. 1979) ("Congress has mandated a very  
5 limited scope of judicial review of the Secretary's decisions  
6 granting or denying Social Security disability benefits.") It is not  
7 the court's role to re-weigh the evidence or substitute its own  
8 judgment for the Commissioner's. Winans v. Bowen, 853 F.2d 643, 644-  
9 45 (9th Cir. 1987).

10 Moreover, if there is conflicting evidence supporting a  
11 finding of either disability or nondisability, the ALJ may resolve  
12 the conflict between experts so long as there is "more than one  
13 rational interpretation of the evidence." Sprague, 812 F.2d at  
14 1229-30. Here, the evidence suggesting that plaintiff may continue  
15 to suffer from degenerative disc disease even following surgery  
16 arguably provides some evidence of disability. In this regard,  
17 plaintiff compares the results of a discogram study and MRI of the  
18 lumbar spine taken many months before plaintiff's spine surgery with  
19 the operative report, arguing that the surgery did not correct all of  
20 his lumbar spine abnormalities. (Tr. 146-47, 183, 226.) According  
21 to plaintiff, the fact of his disability is best reflected by the  
22 Team Conference Note prepared by his treating physician indicating  
23 that plaintiff continues to report that he suffers from considerable  
24 pain that limits him to lifting very light weights and making slow

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1 progress on the treadmill at physical therapy.<sup>1</sup> (Tr. at 245.) On  
2 the other hand, the opinions of the examining physicians listed above  
3 provide evidence of nondisability, as does the opinion of the  
4 nonexamining state agency physician. (Tr. at 167-69, 172-79, 250-  
5 57.) While the ALJ admittedly did not go into considerable detail in  
6 assessing this conflict, he sufficiently discussed all of the  
7 evidence and set forth his interpretation of that evidence in his  
8 decision. The court finds the ALJ's interpretation of the evidence  
9 to be a rational one. See Matney on Behalf of Matney v. Sullivan,  
10 981 F.2d 1016, 1019 (9th Cir. 1992) ("The trier of fact and not the  
11 reviewing court must resolve conflicts in the evidence, and if the  
12 evidence can support either outcome, the court may not substitute its  
13 judgment for that of the ALJ."). Thus, in finding plaintiff capable  
14 of performing work the ALJ properly discharged his responsibilities  
15 of determining credibility and resolving any conflicts or ambiguities  
16 in the medical testimony. See Magallanes v. Bowen, 881 F.2d 747, 750  
17 (9th Cir. 1989). For this reason as well, the court is unpersuaded  
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20       <sup>1</sup> Appropriately, counsel for plaintiff does not argue that the  
21 ALJ failed to articulate "specific and legitimate reasons" in  
22 rejecting the opinion of plaintiff's treating physician, Robert  
23 Egert, M.D. See Lester, 81 F.3d at 830 ("Even if the treating  
24 doctor's opinion is contradicted by another doctor, the Commissioner  
25 may not reject this opinion without providing 'specific and  
26 legitimate reasons' supported by substantial evidence in the record  
for so doing."). This is because there was no opinion to reject.  
Following plaintiff's surgery, Dr. Egert did not render any opinion  
with respect to plaintiff's functional capacity, although he did  
indicate that plaintiff was "permanent and stationary" for workers'  
compensation purposes and that plaintiff should begin vocational  
rehabilitation. (See Tr. at 241-49.)

1 by plaintiff's challenge of the ALJ's residual functional capacity  
2 determination.

3           The court also is not persuaded by plaintiff's particular  
4 argument that the ALJ should have re-contacted Dr. Egert, plaintiff's  
5 treating physician, so that he may have had an opportunity to render  
6 a specific opinion as to plaintiff's residual functional capacity.  
7 Under the regulations, an ALJ should seek additional evidence or  
8 clarification from a claimant's treating physician when a report from  
9 that physician "contains a conflict or ambiguity that must be  
10 resolved, ... does not contain all the necessary information, or does  
11 not appear to be based on medically acceptable clinical and  
12 laboratory diagnostic techniques." 20 C.F.R. §§ 404.1512(e)(1),  
13 416.912(e)(1). See also Mayes, 276 F.3d at 459-60 ("An ALJ's duty to  
14 develop the record further is triggered only when there is ambiguous  
15 evidence or when the record is inadequate to allow for proper  
16 evaluation of the evidence.") Here, however, the ALJ did not find  
17 any conflict, ambiguity or inadequacy within Dr. Egert's records.  
18 Rather, the ALJ simply considered those medical records along with  
19 the rest of the evidence in assessing plaintiff's residual functional  
20 capacity. In this way, the ALJ acted in accordance with his  
21 responsibility to determine the credibility of medical evidence and  
22 linked his residual functional capacity determination to substantial  
23 evidence. There was no need to re-contact plaintiff's treating  
24 physician under the circumstances.

25           Turning to plaintiff's other main argument, it is well-  
26 established that the determination of credibility is a function of

1 the ALJ, acting on behalf of the Commissioner. See Saelee v. Chater,  
2 94 F.3d 520, 522 (9th Cir. 1995). An ALJ's assessment of credibility  
3 should, in general, be given great weight. Nyman v. Heckler, 779  
4 F.2d 528, 530-31 (9th Cir. 1985). Thus, questions of credibility and  
5 resolution of conflicts in the testimony are functions solely of the  
6 Commissioner. Morgan, 169 F.3d at 599. In evaluating a claimant's  
7 subjective testimony regarding pain and the severity of his or her  
8 symptoms an ALJ may consider the presence or absence of supporting  
9 objective medical evidence along with other factors. See Bunnell v.  
10 Sullivan, 947 F.2d 341, 346 (9th Cir. 1991); see also Smolen v.  
11 Chater, 80 F.3d 1273, 1285 (9th Cir. 1996). Ordinary techniques of  
12 credibility evaluation may be employed, and the adjudicator may take  
13 into account prior inconsistent statements or a lack of candor by the  
14 witness. See Fair v. Bowen, 885 F.2d 597, 604 n.5 (9th Cir. 1989).

15 Nonetheless, an ALJ's rejection of a claimant's testimony  
16 must be supported by specific findings. Morgan, 169 F.3d at 599;  
17 Matthews v. Shalala, 10 F.3d 678, 679 (9th Cir. 1993) (citing Miller,  
18 770 F.2d at 848). Once a claimant has presented evidence of an  
19 underlying impairment, the ALJ may not discredit the claimant's  
20 testimony as to the severity of his or her symptoms merely because  
21 the testimony is unsupported by objective medical evidence. Reddick  
22 v. Chater, 157 F.3d 715, 722 (9th Cir. 1998); Light v. Chater, 119  
23 F.3d 789, 792 (9th Cir. 1997). Rather, "the ALJ can reject the  
24 claimant's testimony about the severity of [his or] her symptoms only  
25 by offering specific, clear and convincing reasons for doing so."  
26 Light, 119 F.3d at 792. See also Reddick, 157 F.3d at 722.

1           Here, plaintiff's medical records document a condition  
2 which might reasonably be expected to cause the symptoms alleged by  
3 plaintiff. However, while plaintiff alleges that he is totally  
4 unable to work due to the severity of his symptoms stemming from his  
5 back condition, the ALJ made specific and detailed findings in not  
6 fully crediting plaintiff's testimony. For example, the ALJ pointed  
7 out that the opinions of Dr. Martin, Dr. Eskander and Dr. Baker  
8 indicate that plaintiff is able to engage in work activities. (Tr.  
9 at 167-69, 172-79, 250-57.) The ALJ reasoned that no physician has  
10 rendered an opinion that plaintiff is limited to the extent alleged  
11 by plaintiff himself. In finding plaintiff less than credible, the  
12 ALJ accurately noted that plaintiff sees his treating physician once  
13 every six months and generally takes Tylenol for his pain. (Tr. at  
14 249, 251.) See Johnson v. Shalala, 60 F.3d 1428, 1434 (9th Cir.  
15 1995) (considering claimant's conservative treatment as inconsistent  
16 with the debilitating condition claimed in upholding denial of  
17 benefits); Fair, 885 F.2d at 604 (same). Finally, the ALJ took  
18 special note of Dr. Martin's observation that plaintiff had no  
19 obvious difficulty getting on and off the examination table or moving  
20 about the room at his examination. (Tr. at 167.)

21           For these reasons the court finds that the ALJ fairly  
22 characterized the record and sufficiently stated specific, clear and  
23 convincing reasons for not fully crediting plaintiff's testimony  
24 regarding the severity of his symptoms. See Tidwell v. Apfel, 161  
25 F.3d 599, 602 (9th Cir. 1998). Plaintiff's argument to the contrary  
26 is rejected.

Finally, in his motion plaintiff briefly contests the ALJ's treatment of written statements offered by plaintiff's brother-in-law and plaintiff's spouse. (Tr. at 117-20) Those statements essentially support plaintiff's testimony regarding the extent of his limitations. However, in accurately assessing the medical evidence as a whole and noting plaintiff's conservative care, the court finds that the ALJ also provided specific reasons for disregarding those statements even though those reasons are not expressly identified as such in the ALJ's written decision. See Lewis v. Apfel, 236 F.3d 503, 511 (9th Cir. 2001) ("In all, the ALJ at least noted arguably germane reasons for dismissing the family members' testimony, even if he did not clearly link his determination to those reasons.").

## CONCLUSION

Accordingly, IT IS HEREBY ORDERED that:

15                   1. Plaintiff's motion for summary judgment and/or remand  
16 is denied;

17                   2. Defendant's cross-motion for summary judgment is  
18 granted; and

19                   3. The decision of the Commissioner of Social Security is  
20 affirmed.

21 || DATED: September 27, 2005.

Dale A. Droyd  
DALE A. DROYD  
UNITED STATES MAGISTRATE JUDGE

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